

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JOSE LUIS DOMINGUEZ,

Petitioner,
v.

Case No. 05-CV-72103-DT
Criminal Case No. 97-80995-DT-01
HONORABLE DENISE PAGE HOOD

UNITED STATES OF AMERICA,

Respondent.

ORDER RE: CERTIFICATE OF APPEALABILITY

On July 29, 2005, the Court issued a Judgment and an Order denying and dismissing Petitioner's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence. Petitioner filed a Notice of Appeal on August 25, 2005.

Before Petitioner may appeal the Court's dispositive decision denying his petition, a certificate of appealability must issue. 28 U.S.C. § 2253(c)(1)(B); Fed. R. App. P. 22(b). The Court must either issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c)(3); Fed. R. App. P. 22(b); *In re Certificates of Appealability*, 106 F.3d 1306, 1307 (6th Cir. 1997). A certificate of appealability may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The substantial showing threshold is satisfied when a petitioner demonstrates "that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). When a prisoner's petition is denied on procedural grounds, a certificate of appealability "should issue . . . if the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it

debatable whether the district court was correct in its procedural ruling.” *Id.*

The Court dismissed the petition based on the one-year time limitation on § 2255 motions. After reviewing the Court’s Order and Petitioner’s Notice of Appeal, the Court finds that Petitioner has not shown that the Court’s findings and conclusions of law are debatable among jurists and that the issues raised in the petition deserve further proceedings.

Accordingly,

IT IS ORDERED that a Certificate of Appealability not issue in this case.

/s/ DENISE PAGE HOOD

DENISE PAGE HOOD

United States District Judge

DATED: October 17, 2005